

EX PARTE OR LATE FILED

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

SEP 29 1995

In the Matter of )

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)  
Amendment of Part 90 of the )  
Commission's Rules to Facilitate )  
Future Development of SMR Systems )  
in the 800 MHz Frequency Band )

PR Docket No. 93-144  
RM-8117, RM-8030,  
RM-8029

and

Implementation of Section 309(j) )  
of the Communications Act - )  
Competitive Bidding )  
800 MHz SMR )

PP Docket No. 93-253

To: Rosalind K. Allen  
Chief, Commercial Wireless Division  
Wireless Telecommunications Bureau

**EX PARTE COMMENTS OF  
INDUSTRIAL COMMUNICATIONS & ELECTRONICS, INC.**

Industrial Communications and Electronics, Inc. ("IC&E" or "the Company"), by counsel, in response to the Wireless Telecommunications Bureau's ("WTB" or the "Bureau") request of September 18, 1995, and pursuant to Section 1.1206 of the Federal Communication Commission's ("FCC" or the "Commission") Rules and Regulations, respectfully submits these supplemental comments in the above-referenced docket concerning the FCC's most recent proposal for future licensing of the 800 MHz Specialized Mobile Radio ("SMR") Service. 47 C.F.R. § 1.1206.<sup>1/</sup>

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<sup>1/</sup> As required by the Commission's rules, two (2) copies of this presentation are being filed concurrently with the Commission's Secretary.

## **I. Introduction**

1. IC&E has been engaged in the mobile communications business for 19 years. IC&E is a wireless communications provider in a number of different FCC-licensed services with particular expertise in SMR, cellular and mobile communications services. IC&E constructed its first SMR in 1981, and over the past several years, has developed a multi-state SMR network throughout New England operating forty (40) 800 MHz and 900 MHz systems. The company enjoys a strong channel position in New England and operates or manages approximately one-half of the overall spectrum available for SMR licensing. The total population of the area serviced by IC&E's SMR system in New England is approximately 12 million people of which it is presently serving in excess of 21,000 subscribers.

2. IC&E received FCC authority to develop a wide-area digital SMR network utilizing its 800 MHz frequencies to better serve its New England customers and marketplace in 1993. It has spent the last three (3) years deploying significant financial investment and engineering resources in the development of this wide-area New England system. Through the extensive and varied experience IC&E management has developed over the last twenty (20) years from both an operational and technical engineering standpoint, IC&E is uniquely qualified to comment on the issues in this proceeding which will directly affect not only its wide-area system development, but also the continued operation of its existing traditional analog systems in New England.

3. IC&E has considered the proposal outlined by the WTB on September 18,

1995,<sup>2/</sup> and suggests the following modifications of the Bureau's recommendation.

## **II. Incumbent Systems Protection By the BEA Licensee.**

4. IC&E urges the Bureau to adopt a 22 dBu contour protection standard for incumbent systems. As the Bureau has consistently noted, the 800 MHz band is highly congested with little "white space" remaining between existing systems. In many cases, a system's actual coverage area may extend beyond its hypothetical 40 dBu service contour. IC&E and other service providers generally have many customers that rely on interference-free communications within that 22 dBu contour.

5. IC&E realizes that the Bureau wishes to assign all remaining available spectrum to new, wide-area licensees. However, the area between an incumbents' 40 dBu and 22 dBu contour is already occupied. It is not available for assignment to new licensees in accordance with long-standing FCC co-channel separation requirements. Failure to protect that coverage area will result in large numbers of interference disputes between wide-area licensees and incumbents, and the loss of reliable service to thousands of customers.

## **III. Definition of "Comparable Spectrum".**

6. IC&E understands that the migration plan proposed by the Bureau would provide a period for voluntary negotiations prior to mandatory relocation to "fully comparable alternative frequencies", if available, with all relocation costs to be paid by

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<sup>2/</sup> See Public Notice, "Wireless Telecommunications Bureau Invites Interested Parties to Attend Meeting Regarding Pending Proposals For Wide-Area Licensing of and Competitive Bidding Rules for the 800 MHz Specialized Mobile Radio Service, " DA 95-1965, released September 12, 1995.

the wide-area licensee. At a minimum, the WTB confirmed that relocated incumbents would be entitled to the same number of channels and the same coverage area. If frequencies satisfying this criteria were not available, relocation would not be required. While IC&E agrees that the broad variety of SMR system designs and operational capabilities dictate against adoption of a rigid formula for assessing comparability, there are certain critical factors common to all such systems.

7. Because the value of an SMR operation is highly dependent on the coverage capability of its facilities, comparability in this band should be defined as equivalent or superior coverage of the existing system's service contour, or composite contours of participating stations if multiple facilities are involved. IC&E encourages the Bureau to define a "system" as including all licenses issued to entities participating in an integrated network. "Participating entities" should be defined as any party which enters into a joint marketing agreement or management agreement. The definition of "system" must encompass the concept of integrated operations and networking even if licenses for individual facilities are in various participating entities' names.

8. As detailed in IC&E's Reply Comments in this proceeding<sup>3/</sup> the Commission should prohibit a BEA licensee from selectively retuning an incumbents' systems' frequencies. To allow a BEA license winner to attempt to retune incumbents on a "selective" or "individual channel basis" would be disastrous. If any retuning is to be done by a BEA licensee, total retuning must be done, and not "piecemeal retuning"

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<sup>3/</sup> See Reply Comments of IC&E, PR Docket No. 93-144, ¶¶ 24-25 (filed Mar. 1, 1995).

of selected channels. The wide-area licensee should be required, at the option of the incumbent licensee(s), to retune all channels which comprise a licensee's integrated system. In this way, BEA licensees will neither be able to cherry-pick particularly attractive channels, nor subject integrated system licensees with unwarranted disruption of their systems by relocating only a few channels sufficient to render the incumbent licensee's frequency plan unworkable.

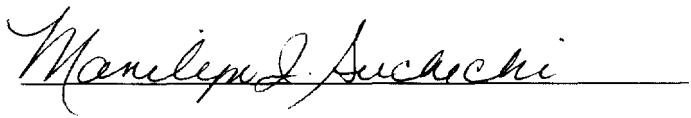
9. The investment in planning and resources by IC&E thus far to implement its ESMR wide-area system has been significant. Planning for a wide-area ESMR requires maximum flexibility in channelization, including the ability to reuse channels, designate channels for signalling or control, and relocate channels within one's operating area. A retuning policy that does not include an integrated system approach is an invitation to anti-competitive activities at minimal cost and should not be considered.

**V. Conclusion**

WHEREFORE, IC&E respectfully requests that the Commission adopt rules in this proceeding in a manner consistent with these ex parte comments.

Respectfully submitted,

**INDUSTRIAL COMMUNICATIONS  
AND ELECTRONICS, INC.**

By: 

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Dated: September 29, 1995

**CERTIFICATE OF SERVICE**

I, Cheri Skewis, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this 29th day of September, 1995, caused to have hand-delivered, a copy of the foregoing Supplemental Comments to the following:

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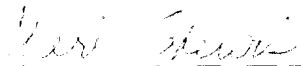
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